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6 Attorneys for Defendants
SAFER TECHNOLOGIES, INC.,
CERMA TECHNOLOGY, INC.,
7 GEORGE ACKERSON, MARY STRANAHAN,
NICHOLAS STREIT and EDWARD HALBACH

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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 MOTOR WORKS LLC,

14 Plaintiff,

15 vs.

16 SAFER TECHNOLOGIES, INC., CERMA
TECHNOLOGY, INC., GEORGE
ACKERMAN, MARY STRANAHAN,
17 NICHOLAS STREIT, TIM STREIT and
EDWARD HALBACH,

18 Defendants.

19 Case No.: 08-CV-03608 JW

20
**DECLARATION OF ALVAH C. BITTNER
IN SUPPORT OF DEFENDANTS' REPLY
BRIEF IN SUPPORT OF MOTION FOR
LEAVE TO FILE COUNTERCLAIMS**

21 Date: March 8, 2010
Time: 9:00 a.m.
Courtroom: 8, 4th Floor
Judge: Hon. James Ware

22 I, Alvah C. Bittner, declare:

23 1. I am a resident of the State of Washington and Principal with Bittner &
Associates a Research, Development, Testing and Evaluation (RDT&E) Consultancy located in
24 Kent, WA. Bittner & Associates has been in business since my retirement as a Research Team
Leader, with the Transportation Research Group of the Battelle Seattle Research Center on 1
April 2005. At the time of my retirement, I was a Full-Professor affiliated with the Department
25 of Environmental Heath at the University of Washington. I have an extensive background
serving as a consultant concerned with the design and evaluation of research-studies at all stages
26 of RDT&E with a particular focus on assurance of the validity of claims that may be derived
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1 from research studies. This is broadly reflected in my more than 400 publications (>100 journal
 2 and book chapters, and edited volumes as well as >300 other technical and proceedings reports).

3 2. I have the level of expertise regarding the evaluation of research and research
 4 claims that qualifies me as an expert witness in the aforementioned areas.

5 3. Circa mid-February 2008, I was contacted by George Ackerson, who requested a
 6 “science background check” with regard, to Mr. John Murray and his purported patent filing
 7 relative to a polyether modified polysiloxane.

8 4. I subsequently found and evaluated a patent application, filed by Mr. John Murray
 9 (ca.2004) as well as decades earlier prior-art patients addressing the addition of polysiloxanes to
 10 lube oils/greases. These altogether led me initially to conclude that the patent application was
 11 “highly suspect in several regards, if not possibly fraudulent.”

12 5. I based my findings on several important elements to any patent that in this case
 13 presented marked inconsistencies. In this regard, one of the foremost requirements is to address
 14 what is known as “prior art.” In this case there were at least two decades of relevant prior art
 15 regarding polysiloxanes ignored in the pending patent. Mr. Murray claims to have invented
 16 specific compound that he also states as being similar to another company’s formulation: BYK
 17 333, manufactured by BYK Chemmie, of Germany.

18 6. Relative to suspicions re: Mr. John Murray’s application, I consulted with an
 19 associate of mine who is a PhD Nuclear Chemist, regarding a definitive comparison of Mr.
 20 Murray’s product and BYK 333. Our consensus was that two sets of samples should be obtained
 21 and compared in such manner as to either confirm, or refute our developing conjecture that this
 22 patent application was possibly fraudulent; i.e., Mr John Murray’s purported patent processes
 23 were in fact not being conducted as claimed as to a) a product similar to but unique from BYK
 24 333, and b) then structural alterations by a process of heating, and/or sonic mixing, and/or
 25 filtering. Findings of substantial differences it should be noted would both tend to counter our
 26 growing conjecture, and lend support to a claim of substantive differences between BYK 333 and
 27 the product offered by Mr. John Murray.

7. We recommended that one set of samples should be obtained from the distributor, Cerma Technology, Inc., and the other from BYK Chemmie for evaluation. Moreover, that a two pronged approach, to either confirm or refute our suspicions, be implemented. This included both (a) conduct of FTIR (Fourier Transform Infrared) Spectroscopy for comparing of the chemical compensations of the two produces, and (b) Nuclear Magnetic Resonance (NMR) for confirmation as to their individual molecular structures.

8. Regardless of this level of due diligence on the part of Safer Technologies, I strongly predicted that the patent application, with its something more than two score claims, was such an “unsupported mishmash” that it would never be awarded. I was informed ca. March 12 2008 that my prediction was confirmed when this same application was summarily denied as to every claim.

9. Further to the two analytical studies conducted by Montana State University, both external professional and my own reviews of the two graph sets for the FTIR and NMR, concurred in judgment that there remains no elemental possibility that the two sets of products samples are not from the manufacturing batch processes of BYK Chemmie. Attached hereto as Exhibit "A" are true and correct copies of the graphs.

10. I am over eighteen years of age and have the capacity to perceive and recollect. If called upon to testify, I am competent to testify to the foregoing matters, which are within my personal knowledge.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on February 22, 2010.

/s/ Alvah C. Bittner

Alvah C. Bittner

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2 GENERAL ORDER 45 CERTIFICATION
3

4 I, James M. Hanavan, hereby attest pursuant to N.D. Cal. General Order No. 45 that the
concurrence to the filing of this document has been obtained from each signatory hereto.
5

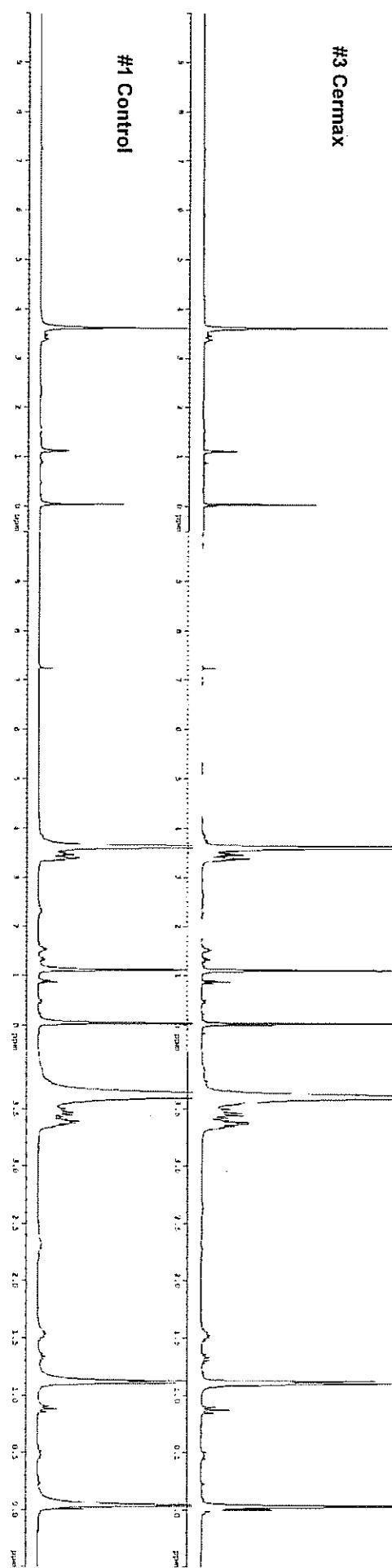
6 Dated: February 22, 2010

CRAIGIE, McCARTHY & CLOW

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9 _____
/s/ James M. Hanavan

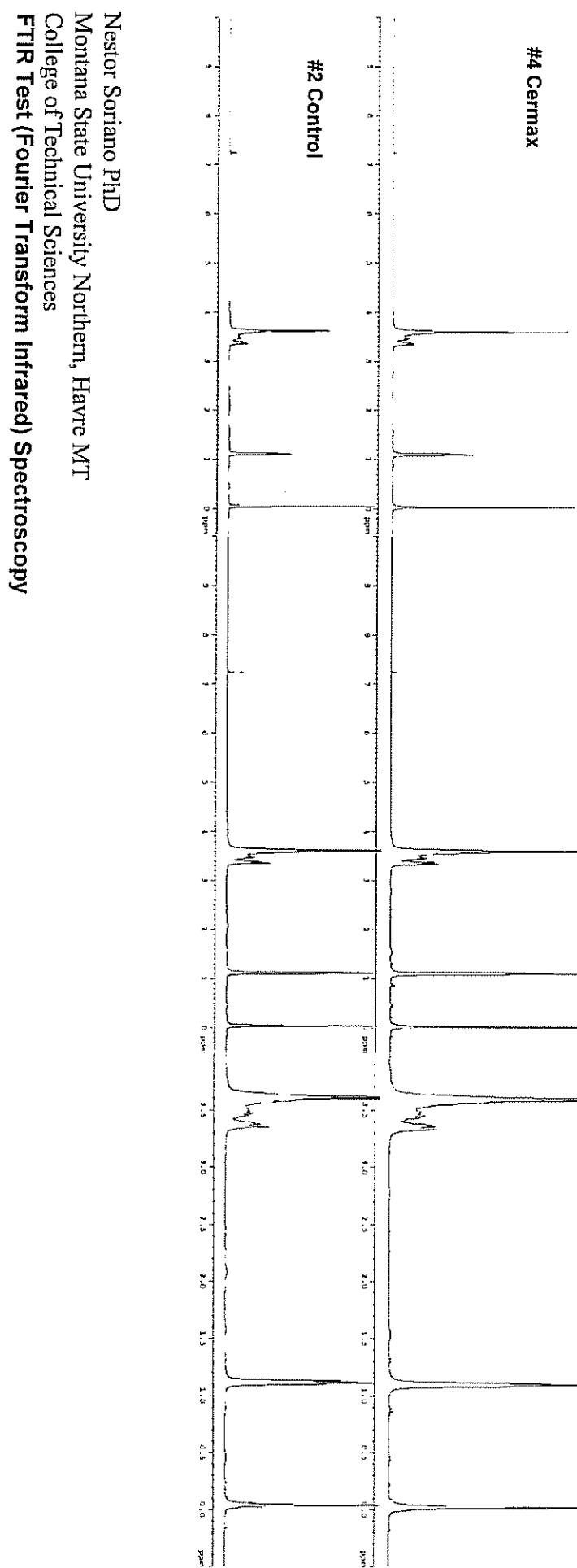
10 By: James M. Hanavan
11 Attorneys for Defendants
12 SAFER TECHNOLOGIES, INC.,
13 CERMA TECHNOLOGY, INC.,
14 GEORGE ACKERSON,
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17 EDWARD HALBACH

Exhibit “A”



Scott Busse PhD
Montana State University
Bozeman, MT

NMR Test (Nuclear Magnetic Resonance)



Nestor Soriano PhD
Montana State University Northern, Havre MT
College of Technical Sciences

FTIR Test (Fourier Transform Infrared) Spectroscopy